

CAUTION: The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

IC 4-2-6-5

Payment by an agency of its attorneys' annual licensing fees was not made in return for services rendered and was therefore not considered compensation within the scope of the Additional compensation rule.

October 13, 2005

No. 05-I-14

BACKGROUND INFORMATION

On August 25, 2005, a Staff Attorney employed by the Indiana Gaming Commission (IGC), inquired of their General Counsel, whether the Indiana Gaming Commission would pay the annual attorney license fees for attorneys employed by the Commission. The Staff Attorney's email communication to the General Counsel, included a reference to page five (5) of the May 2005 issue of "Ethics News," which is the Official Newsletter of the Indiana State Ethics Commission. Under the "Staff Advice" portion of the newsletter, the Ethics Commission indicates that the State Board of Accounts "would not take exception to a state agency paying for . . . annual license fees if an attorney was actually working in an attorney position for the agency."

The IGC requires that the attorneys employed in the Legal Division of the agency maintain their attorney license in active status. The Commission is inclined to reimburse staff attorneys for the licensing fees. The reimbursement would only apply to attorneys who are working in their capacity as an attorney for the Commission. Lawyers who are on staff with the Commission but do not work in an attorney capacity will not be reimbursed. Under the proposed policy, the attorney would be initially responsible for payment of the fees and the fees will then be reimbursed by the Commission upon submission of a copy of the check and a copy of the Supreme Court's Fee Statement.

In 2005, the fee for an Active Status attorney is one hundred five dollars (\$105). The Commission currently has four attorneys on staff working in their capacity as attorneys. Thus, the cost of the total fee reimbursement would be four hundred twenty dollars (\$420).

ISSUE

Whether the State Ethics Code prohibits the Indiana Gaming Commission from paying the annual attorney license fees for attorneys employed by the agency and working in their capacity as an attorney for the Indiana Gaming Commission.

RELEVANT LAW

IC 4-2-6-5; State officers and employees; compensation for official duties

Sec. 5. No state officer or employee shall solicit or accept compensation, other than that provided for by law for such office or employment for the performance of his duties; it shall be unlawful for any person, other than state officers or employees performing their duties in making payments to state officers or employees as provided by law, to pay, or offer to pay, any state officer or employee any compensation for the performance of his official duties.

CONCLUSION

The payment of CLE fees is not "compensation" as considered by IC 4-2-6-5. Our rationale for that interpretation rests in the fact that the payment of dues and fees, although a thing of value, would not necessarily be paid "in return for services rendered". To us the term "in return for services rendered" implies a specific quid pro quo. The fees in these types of situations would be

paid to maintain the professional standards of the attorneys involved, and not necessarily specifically in return for services rendered. In order to ensure that the fees or dues being paid can not be construed to be "in return for services rendered" we have encouraged agencies to have a policy with respect to how and when these fees are paid. That written policy could specifically state that the fees are not paid "in return for services rendered", but would be paid as part of the overall compensation for the employee. As a matter of public policy the Ethics Commission recognizes that state agencies have a compelling interest to ensure that state employees have the qualifications and certifications that are required for the performance of their official duties.